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In the Supreme Court of the United States

OCTOBER TERM, 1976

JACK WEINSTEIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the evidence seized on his premises pursuant to a search warrant should have been suppressed because it was based on information derived from an allegedly unlawful arrest of another person. He also challenges the sufficiency of the evidence to support his conviction.

Following a jury trial in the United States District Court for the District of Nevada, petitioner was convicted of conspiring to transport and aiding and abetting the transportation of 115 items of stolen property in interstate commerce, in violation of 18 U.S.C. 2, 371, and 2314. He was sentenced to concurrent terms of three years' imprisonment on both counts, on the condition that after ninety days in jail-type confinement the

remainder of the sentence would be suspended, and petitioner placed on probation for the remainder thereof. He was further assessed cumulative fines of $10,000 on each count. The court of appeals affirmed (Pet. Exh. A).

The evidence at trial disclosed that petitioner, the owner of a jewelry store and a pawn shop in Las Vegas, Nevada, purchased the proceeds of two jewel robberies in Phoenix, Arizona, and Kansas City, Missouri, knowing them to have been stolen and pursuant to a conspiracy with the robbers. Evidence of these offenses was obtained primarily from searches of petitioner's jewelry and pawn shops pursuant to a warrant. Probable cause for the warrant was based on information derived from the arrest and subsequent searches of petitioner's co-defendant, Jones. Jones was arrested by an FBI agent and local police on the basis, *inter alia,* of information in an FBI teletype from Kansas City which identified Jones as one of the participants in the Kansas City robbery, described his car, and indicated that the proceeds were probably to be disposed of in Las Vegas. The evidence at trial also included testimony by one of the robbers that petitioner had indicated knowledge of the details of one of the robberies and had participated in a discussion in which another robbery was planned.

1. Petitioner does not dispute that the warrant to search his premises was supported by probable cause. Petitioner clearly lacks standing to challenge the arrest and subsequent search of Jones, which did not infringe petitioner's rights, and his contention to the contrary is without merit. *United States* v. *Calandra,* 414 U.S. 338, 348; *Brown* v. *United States,* 411 U.S. 223, 229-230; *Alderman* v. *United States,* 394 U.S. 165. In any event,

as the district court found, the record abundantly establishes that Jones's arrest was supported by probable cause.[1]

2. Petitioner contends that the evidence was insufficient to demonstrate that he knew the jewels were stolen, that he aided and abetted their interstate transportation, and the value of jewels involved in a "single transportation" exceeded $5,000 (Pet. 20-23). But the evidence included testimony by one of petitioner's co-defendants directly establishing petitioner's knowledge of and participation in the conspiracy, and petitioner's claim (Pet. 21) that such testimony was "incredible" asks the Court to invade the province of the jury. Petitioner does not claim that the value of the 115 items in the indictment was less than $5,000, and his contention that the jurisdictional amount must be met by "any single transportation in interstate commerce" (Pet. 22) is contrary to the statute. 18 U.S.C. 2314. See also *Schaffer* v. *United States,* 362 U.S. 511, 517-518.[2]

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[1]The circumstances surrounding Jones's arrest are set forth in detail in the district court's order denying the motion of all the defendants to suppress. The Kansas City teletype, which was received on the evening of July 3, 1973, indicated that Jones and others had robbed a Phoenix store on July 2, 1973, of $80,000 in loose diamonds (Order, p. 3). A portion of the diamonds had been disposed of in Las Vegas (Order, p. 4). The teletype indicated further that a source had told the FBI that the three men had left Kansas City on June 25 with the express purposes of robbing jewelry stores (*ibid.*). There was a description of Jones and other personal information about him. Another teletype from the FBI in Phoenix corroborated this information (Order, p. 5). The district court found that the information in these teletypes was reliable (Order, pp. 19-20).

[2]In any event, there was testimony from which the jury could conclude that a particular opal and diamond were transported during the same interstate trip in early June 1973, and there was expert testimony that these two items had a value in excess of $5,000 (Tr. 428, 430).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1976.

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